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April 23, 2014

Department of Transportation
Division of Engineering Services
Office Engineer
1727 30TH Street, MS-43
P.O. BOX 168041
SACRAMENTO, CA 95816-8041

Re: 12-Ora-5-3.7/6.2
12-QF96C4 I-5 HOV Extension
Project ID 1200020278
ACNHPI-005-2(966)75E
CMLN-6212(015)E

Dear Department:

I represent OHL USA, Inc. regarding its bid referenced above.

OHL notices that its April 17, 2014 bid for the above referenced project is listed on your website as "irregular." You show bid items at zero value that changed in addendum 2. Plus, your representatives tell OHL that its quantities did not match those stated on the item sheets that OHL submitted.

However, such "irregularities" are (A) minor, immaterial, and inconsequential; (B) do not harm the public or other bidders, and (C) provided no advantage to OHL. Therefore, the Department should waive them. See Ghilotti Construction Co. v. City of Richmond, 45 Cal.App.4th 897 (1996) and MCM v. City & County of San Francisco, 66 Cal.App.4th 359, 373 (1998).

As you know, the purpose to California statutes and Department' rules requiring competitive bidding is,

...to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest.

See Domar Electric, Inc. v. City of Los Angeles, 9 Cal. 4th 161, 174 (1994). Here, none of these forbidden practices occurred. Hence, the public interest demands that the Department accept the lowest price provided by a responsible contractor, which is what OHL provided.

OHL acknowledged all addendums in its bid package, thus proving that OHL considered and agreed to be bound by all requirements of the addendums and that its bid is responsive. Had OHL completed and submitted all addendums, at OHL's unit prices, the difference in its bid would have been only about \$22,145 more, less than a .00055% difference in OHL's bid price. Moreover, even with such increase, OHL still would have been the low bidder.

The Department already has litigated this type of "irregularity," and lost the issue as minor, immaterial, and inconsequential. Pozar v. Dept. of Transportation, 145 Cal.App.3d 269 (1983) is almost directly on point. In that case, the California Court of Appeal required the Department to follow its published procedure for resolving discrepancies in bid figures. The Pozar court noted that the form that the Department supplied for bids and proposals contains the following language as to discrepancies between per-unit and unit price totals,

In case of discrepancy between the item price and the total set forth for a unit basis item, the item price shall prevail, provided, however, if the amount set forth as an item price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the 'Total' column, then the amount set forth in the 'Total' column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

Just as the Pozar court mandated that the Department follow its established practice and its provision quoted above, interpreting the bid so that item prices prevail, so the Department should do so again on the project referenced above, for the same reasons.

In Cypress Security, LLC v. City and County of San Francisco, 184 Cal. App.4th 1003, 1015 (2010), the California Court of Appeal recently instructed,

We do stress, however, that responsiveness considerations "must be evaluated from a practical rather than a hypothetical standpoint, with reference to the factual circumstances of the case. They must also be viewed in light of the public interest, rather than the private interest of a disappointed bidder" hoping to prevail by identifying "minor technicalities" in the winning submission. (Ghilotti, at pp. 908-909.)

Practically, considering the public interest, neither the Department nor the taxpaying public should bear any cost due to OHL's omission, and OHL should not lose its winning bid for such a trivial and non-prejudicial reason.

Plus, since OHL's April 17, 2014 bid, on April 22, 2014, OHL submitted its DBE numbers and met Department' 11% goal.

Department of Transportation

Re: 12-OF96C4 I-5 HOV Extension

April 23, 2014

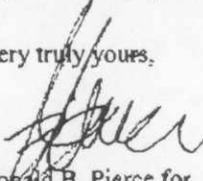
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Every practical and public policy reason compels the Department to accept OHL's bid, as submitted. For these reasons, OHL respectfully requests that the Department waive any bid "irregularities" as inconsequential, deem OHL's bid as the low and responsible bid, and accordingly award the contract to OHL.

The taxpaying public in California, the Department, and OHL demand no less.

If you have any questions, comments, or contrary understandings, please contact me.

Very truly yours,



Ronald B. Pierce for

RB PIERCE, A Professional Law Corporation



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Facsimile Transmittal Form

To: Caltrans

From: Dan Hirsh

CC:

Date: 4/23/2014

Phone:

Pages: 3 (Including Cover)

Fax: (916)227-6282

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Message:

Letter to Caltrans regarding project : 12-OF96C4 I-5 HOV Extension in the cities of Dana Point and San Clemente Bid Date 4-17-2014.